

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

UNITED STATES,
Plaintiff, and the

STATE OF WISCONSIN,
Plaintiff-Intervenor,

v.

ACE ETHANOL, L.L.C.,
Defendant.

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Civil Action Number:

CONSENT DECREE

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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America (hereinafter "Plaintiff" or "the United States"), on behalf of the United States Environmental Protection Agency (herein, "EPA"), has, simultaneously with lodging of this Consent Decree, filed a Complaint alleging that Defendant, Ace Ethanol, L.L.C. (referred to herein as "Ace" or "Defendant") commenced construction of a major emitting facility and major modifications of a major emitting facility in violation of the Prevention of Significant Deterioration ("PSD") requirements at Part C of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7470-7492, and the regulations promulgated thereunder at 40 C.F.R. § 52.21 (the "PSD Rules");

WHEREAS, Plaintiff further alleged that Defendant commenced construction of an emitting facility or modified emitting facility without first obtaining the appropriate preconstruction permits and installing the appropriate air pollution control equipment required by 40 C.F.R. § 52.21 and the Wisconsin State Implementation Plan ("SIP") approved pursuant to 42 U.S.C. § 7410;

WHEREAS, Plaintiff further alleged that potential air emissions from the Defendant's facility were underestimated;

WHEREAS, the State of Wisconsin, Department of Natural Resources ("WDNR" or "Plaintiff-Intervenor"), has, simultaneously with lodging of this Consent Decree, filed a Complaint in Intervention, alleging that Ace was and is in violation of state and federal air pollution control laws by failing to obtain the appropriate pre-construction permits, by failing to

install appropriate pollution control devices, by failing to meet volatile organic compound emission limits, and by failing to control hazardous air emissions;

WHEREAS, on June 3, 2002, the U.S. EPA met with representatives of the ethanol plants in Illinois, including Ace, to discuss VOC testing and test results, VOC emissions, and related compliance issues;

WHEREAS, on April 24, 2003, Ace met with U.S. EPA and WDNR and agreed to negotiate with them for the installation of controls on its plant to control air emissions;

WHEREAS, Ace has ordered and is prepared to install air pollution control equipment, i.e. a regenerative thermal oxidizer;

WHEREAS, Ace has worked cooperatively with EPA and WDNR regarding the alleged violations;

WHEREAS, the United States and Plaintiff-Intervenor, State of Wisconsin (collectively "Plaintiffs"), and the Defendant have agreed that settlement of this action is in the best interest of the parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, Plaintiffs and the Defendant consent to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, without any admission of fact or law, it is hereby ORDERED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Complaints state a claim upon which relief can be granted against the Defendant under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and 28 U.S.C. §

1355. This Court has jurisdiction of the subject matter herein and over the parties consenting hereto pursuant to 28 U.S.C. § 1345 and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and supplemental jurisdiction, under 28 U.S.C. § 1367, over the claims arising under Wisconsin law. Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c).

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the Plaintiffs and upon the Defendant as well as the Defendant's officers, employees, agents, successors and assigns. In the event Defendant proposes to sell or transfer its facility (i.e., a plant or mill) subject to this Consent Decree before termination of the Consent Decree, it shall advise such proposed purchaser or successor-in-interest in writing of the existence of this Consent Decree, and shall send a copy of such written notification by certified mail, return receipt requested, to the EPA Regional Administrator for the region in which the facility is located before such sale or transfer, if possible, but no later than the closing date of such sale or transfer. The Defendant shall provide a copy of the Consent Decree and the Control Technology Plan required in Paragraph 11 of this Consent Decree to the proposed purchaser or successor-in-interest. In the event the Defendant sells or otherwise assigns any of its right, title, or interest in its facility, prior to termination of the Consent Decree, the conveyance shall not release the Defendant from any obligation imposed by this Consent Decree unless the party to whom the right, title or interest has been transferred agrees in writing to fulfill the obligations of this Consent Decree.

III. FACTUAL BACKGROUND AND APPLICABLE DEFINITIONS

3. (a). Ace is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and the federal and state regulations promulgated pursuant to the Act.

(b). Ace owns and operates a plant in Stanley, Wisconsin, for the manufacture of ethanol. Ace receives whole corn which is then milled, cooked, and fermented. After fermentation, the raw product is distilled to produce ethanol. Distillation separates the liquid ethanol from the corn meal, which Ace may dry or sell as wet mash for animal feed. The Plaintiffs allege that in the course of these manufacturing activities significant quantities of particulate matter (“PM”), particulate matter at or below 10 microns (“PM₁₀”), carbon monoxide (“CO”), volatile organic compounds (“VOCs”), nitrogen oxides (“NO_x”), and other pollutants are generated, including hazardous air pollutants (“HAPs”) listed under Section 112(b)(1), 42 U.S.C. § 7412(b)(1) of the Act. The primary sources of these emissions are the feed dryers, fermentation units, gas boilers, cooling cyclones, ethanol truck load-out systems, and the fugitive dust emissions from the facility operations, including roads.

(c). Plaintiffs allege that Ace’s ethanol plant in Stanley, Wisconsin is a “major emitting facility,” as defined by Section 169(1) of the Act, 42 U.S.C. § 7479(1), and the federal and state regulations promulgated pursuant to the Act.

(d). Definitions: Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the Act, and the federal and state regulations promulgated pursuant to the Act.

IV. COMPLIANCE PROGRAM SUMMARY

4. Ace shall implement a program of compliance at its ethanol distillation facility to attain the emission levels required under this Consent Decree for VOC, PM, PM₁₀, CO, and NOx. Ace's compliance program is summarized below in Paragraphs 5 through 10, and implemented through Paragraphs 11 through 14 and 18 through 23 of this Consent Decree.

5. Ace shall implement a program to control and minimize fugitive particulate matter emissions from facility operations as set forth in the approved Control Technology Plan required under Part V of this Consent Decree and which is Attachment 1 to this Consent Decree.

6. Ace shall demonstrate compliance with the required emission levels on a unit-by-unit basis as set forth in the approved Control Technology Plan.

7. Ace shall demonstrate compliance with the emission limits established under this Consent Decree by the use of performance testing, parametric monitoring, recordkeeping and reporting, or initial and periodic compliance testing, where appropriate, as set forth in the approved Control Technology Plan.

8. Ace shall maintain records to demonstrate compliance with New Source Performance Standards ("NSPS"), Part 60, Subparts Db, Dc, Kb, and VV, and its fugitive dust management program.

9. Ace shall complete and submit for WDNR approval, a source-wide PSD permit application that meets the requirements of this Consent Decree.

10. Upon execution of the Consent Decree, Ace shall comply with the provisions of 40 C.F.R. Part 52.

V. COMPLIANCE PROGRAM REQUIREMENTS

A. INSTALLATION OF CONTROLS AND APPLICABLE EMISSION LIMITS

11. Ace shall implement a plan for the installation of air pollution control technology ("Control Technology Plan") capable of meeting the following emission level reductions for the identified units set forth in subparagraphs (a) through (j). Ace's Control Technology Plan, which has been approved by Plaintiffs, is attached to this Consent Decree and is incorporated herein by reference.

(a). Feed Dryers: 95 percent reduction of VOC or emissions no higher than 10 parts per million ("PPM") of VOC, 90 percent reduction of CO emissions or emissions no higher than 100 PPM CO, 0.04 lb/MMBtu for NO_x, and reduction of PM and PM₁₀ based on operation of pollution control technology specified in the approved Control Technology Plan and as established after initial performance testing pursuant to Paragraph 19 of this Consent Decree. The following units are subject to these limits: S40/P40

(b). Fermentation Units: 95 percent reduction of VOC or if the inlet is less than 200 PPM of VOC, then 20 PPM or lower of VOC. The following units are subject to this limit: S20/P20, P21, P22, P23, P32

(c). Gas Boilers: 0.04 lb/MMBtu for NO_x. The following units are subject to this limit: S50/B50

(d). Fugitive Dust Control PM: Develop a program for minimization of fugitive dust emissions from facility operations. The following area is subject to this program: F01

(e). Ethanol Loadout:
Truck loadout: Design an enclosure for total capture of VOC and operate a closed loop system vented to a flare for destruction of the captured VOC.
Railcar loadout: All railcars shall be dedicated as ethanol only
The following unit is subject to this limit: F04

(f). Fugitive VOC: Implement and comply with the requirements of 40 C.F.R. Part 60, Subpart VV. The following units are subject to these requirements: F05

(g). Additional Requirements for Hazardous Air Pollutants ("HAPs"): Following the start-up of the control equipment required in the approved Control Technology Plan, Ace shall continually operate its facility so as not to exceed source-wide allowable emissions of 9.0 TPY for any single federally listed HAP or 24.0 TPY for all federally listed HAPs based on a 12-month rolling sum, rolled monthly, and recorded monthly. For the first eleven months, following start-up of the control equipment required in the approved Control Technology Plan, compliance with the 12-month rolling sum will be demonstrated based on the schedule to meet applicable emission caps as set forth in the approved Control Technology Plan. If, based on emissions testing as set forth in the approved Control Technology Plan, additional control measures are required to meet the 9.0 or 24.0 TPY emission caps, such control measures shall be implemented and included in the operating permit application required under Paragraph 13.

(h). New Source Performance Standards (NSPS): Identify and implement applicable NSPS requirements codified at 40 C.F.R. Part 60. The following NSPS apply: NSPS subpart Db (Industrial Commercial-Institutional Steam Generating Units greater than 29 MW (100 million BTu/hour)); NSPS subpart Dc (Small Industrial Commercial-Institutional Steam Generating Units less than 29 MW (100 million BTu/hour)); NSPS subpart Kb (Volatile Organic Liquid Storage Vessels); and NSPS subpart VV (Synthetic Organic Chemicals Manufacturing Industry Leak Detection, Monitoring and Repair Requirements).

12. Ace shall implement the approved Control Technology Plan in accordance with the schedule set forth in that plan. Ace's approved Control Technology Plan is incorporated by reference herein and made directly enforceable by Plaintiffs under this Consent Decree.

B. PERMITTING AND MODIFICATIONS

13. PSD Permitting: Ace has submitted to WDNR a PSD permit application that includes the requirements of this Consent Decree and the emission level reductions specified in Part V (“Installation of Controls and Applicable Emission Limits”) of this Consent Decree.

14. Upon execution of this Consent Decree, Ace shall comply with the provisions of 40 C.F.R. Part 52.

15. In determining whether a future modification will result in a significant net emissions increase, Ace cannot take credit for any emission reductions resulting from the implementation of the approved Control Technology Plan for netting purposes as defined by 40 C.F.R. § 52.21(b)(3). In addition, the emission reductions of PM, PM₁₀, NO_x, SO₂ and CO required under this Consent Decree and the applicable NSPS may not be used for any emissions offset, banking, selling or trading program. VOC emissions reductions up to 98 percent of the uncontrolled feed dryer emissions may not be used for any emissions offset, banking, selling or trading program.

16. To the extent that the permit terms and conditions of Ace’s PSD permit, if and when it is issued by WDNR, are equivalent to, or more stringent than, the compliance, emission control, emission limits, emission testing and record-keeping requirements of Paragraphs 4 through 26 of this Consent Decree and the attached Control Technology Plan, the permit terms and conditions shall control.

17. Except as provided in the approved Control Technology Plan, nothing herein shall be construed to authorize Ace to commence the construction or installation of any new facilities or equipment prior to the issuance of a permit authorizing the same by WDNR. Neither this

Consent Decree nor the approved Control Technology Plan authorizes the construction of anything other than emissions control equipment for existing facilities.

C. EMISSION LIMITS

18. Unit Emission Limit for VOC, CO, NO_x: Following the start-up of each piece of control equipment required in its approved Control Technology Plan, Ace shall continually operate each unit in accordance with the operating parameters set forth in the approved Control Technology Plan.

19. Unit Emission Limit for PM and PM₁₀: By no later than 45 days following the initial performance test of the control equipment for the feed dryer as required in Paragraphs 11(a) and 22, Ace shall propose PM and PM₁₀ emission limits based on the data collected from initial performance testing and other available pertinent information. Ace shall immediately comply with the proposed emission limit. Upon approval by WDNR of the proposed emission limit, WDNR shall provide written notice to Ace of the approved limit, and that limit shall be incorporated into, and enforceable under, this Consent Decree.

20. Source-wide Cap: Following start-up of the control equipment required in its approved Control Technology Plan, Ace shall continually operate its facility so as not to exceed the source-wide allowable emission caps of 9.0 TPY for any single hazardous air pollutant or 24.0 TPY for all hazardous air pollutants based on a 12-month rolling sum, rolled monthly, and recorded monthly. For the first eleven months, following start-up of the control equipment required in the approved Control Technology Plan, compliance with the 12-month rolling sum will be demonstrated based on a schedule to meet applicable emission caps as set forth in the approved Control Technology Plan. This provision shall survive termination of this Consent

Decree until the 9.0 TPY and 24.0 TPY emission caps, or more stringent limits, are incorporated into a federally-enforceable permit for the facility.

D. DEMONSTRATION OF COMPLIANCE

21. Ace shall demonstrate continuous compliance with the emission limits established under this Consent Decree by the use of parametric monitoring, recordkeeping and reporting, as set forth in the approved Control Technology Plan.

22. By no later than 180 days following the start-up of each piece of control equipment required in the approved Control Technology Plan, Ace shall demonstrate through emissions testing of each emissions unit as specified in the approved Control Technology Plan, conducted in accordance with a WDNR and U.S. EPA approved test protocol, that it has met the required destruction efficiency and/or emission limit. Ace shall follow all testing requirements in the Wisconsin SIP. Ace shall retest the dryer for VOCs, CO, PM, and PM₁₀ no less than annually for the effective period of the Consent Decree. Ace shall retest all other units in accordance with WDNR's policy regarding performance testing frequency.

23. Ace shall maintain control technology performance criteria monitoring data and records as set forth in the approved Control Technology Plan, and shall make them available to the Plaintiffs upon demand as soon as practicable.

E. RECORDKEEPING AND REPORTING REQUIREMENTS

24. Beginning with the first full calendar quarter following lodging of this Consent Decree, Ace shall submit written reports within 30 days following each calendar quarter to WDNR and U.S. EPA that itemize Consent Decree requirements and the approved Control Technology Plan requirements, the applicable deadlines, the dates the tasks were completed, unit

emissions data and data to support Ace's compliance status with the terms of this Consent Decree. Reports shall be sent to the U.S. EPA and WDNR addresses identified in Paragraph 57 ("Notice"). Emissions data may be submitted in electronic format.

25. Ace shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that support the reporting and compliance requirements under this Part for a period of three years following the termination of this Consent Decree, unless other regulations require the records to be maintained longer.

26. All notices, reports or any other submissions from Ace shall contain the following certification and may be signed by an owner or operator of the company responsible for environmental management and compliance:

"I certify under penalty of law that I have personally examined the information submitted herein and that I have made a diligent inquiry of those individuals immediately responsible for obtaining the information and that to the best of my knowledge and belief, the information submitted herewith is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

VI. CIVIL PENALTY

27. The Defendant shall pay to the State of Wisconsin forfeitures of \$250,000 for the violations described in the State's Complaint, plus a \$60,000 (24%) penalty assessment under Wis. Stat. § 757.05(1), a \$25,000 (10)% environmental assessment pursuant to Wis. Stat. § 299.93(1), the \$2,500 (1%) jail assessment provided for in Wis. Stat. § 814.63(3)(ag), the \$25 court costs imposed under Wis. Stat. § 814.63(1), the \$7 crime lab and drug assessment pursuant to Wis. Stat. § 814.63(3)(am), the \$68 court support services fee required by Wis. Stat. § 814.634, and the \$9 justice information fee provided for in Wis. Stat. § 814.635, for a total of

\$337,609. Payment will be made in ten installments, with the first payment of \$33,859 due 30 days after entry of this Consent Decree, and the subsequent nine payments of \$33,750 each due on the first day of each month commencing 60 days after entry of this consent decree. In the event the Defendant puts the air emissions control equipment (the regenerative thermal oxidizer) prescribed in the attached Control Technology Plan into operation sooner than the February 23, 2004 deadline set forth in the Control Technology Plan, the above-referenced forfeitures will be reduced by \$500 per day (\$675/day, including assessments) for each day the equipment is in operation before the February 23, 2004 deadline. Any such reduction will be subtracted from the final installment payment. All said payments will be made by check made payable to the State of Wisconsin and sent to Assistant Attorney General Shari Eggleston, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707.

28. Any stipulated penalties paid to the United States shall be by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File Number and DOJ Case Number, and the civil action case name and case number of the District of Wisconsin. The costs of such EFT shall be Ace's responsibility. Payment shall be made in accordance with instructions provided to Ace by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Wisconsin. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. Ace shall provide notice of payment, referencing the USAO File Number and DOJ Case Number 90-5-2-1-07784, and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Paragraph 57 ("Notice").

29. No amount of the forfeitures or penalties to be paid by Ace shall be used to reduce its federal or state tax obligations.

VII. STIPULATED PENALTIES

30. The Defendant shall pay stipulated penalties in the amounts set forth below to the Plaintiffs, to be paid 50 percent to the United States and 50 percent to the State of Wisconsin, for the following:

(a). for each day of failure to meet the deadlines for installation of control technology systems set forth in the Control Technology Plan:

1st through 30th day after deadline	\$800
31st through 60th day after deadline	\$1,200
Beyond 60th day	\$2,000

(b). for failure to conduct a compliance test as required by Paragraph 22, per day per unit:

1st through 30th day after deadline	\$250
31st through 60th day after deadline	\$500
Beyond 60th day	\$1,000

(c). for failure to demonstrate compliance with emission limits set forth in the approved Control Technology Plan or emission limits set pursuant to Part V Section C ("Emission Limits"): \$5000 per emissions test for each pollutant

(d). for each failure to submit reports or studies as required by Part V Section E ("Recordkeeping and Reporting Requirements") of this Consent Decree, per day per report or notice:

1st through 30th day after deadline	\$250
31st through 60th day after deadline	\$500
Beyond 60th day	\$1,000

(e). for failure to pay or escrow stipulated penalties, as specified in Paragraphs 31 and 32 of this section, \$500 per day per penalty demand.

(f). for failure to notify the Plaintiffs pursuant to Paragraph 2 of Ace's sale or transfer of the facility, \$250 per day.

31. Ace shall pay stipulated penalties upon written demand by the Plaintiffs no later than thirty (30) days after Defendant receives such demand. Stipulated penalties shall be paid to the Plaintiffs in the manner set forth in Part VI ("Civil Penalty") of this Consent Decree.

32. Should Ace dispute its obligation to pay part or all of a stipulated penalty, it may avoid the imposition of the stipulated penalty for failure to pay a penalty due to the Plaintiffs by placing the disputed amount demanded by the Plaintiffs, not to exceed \$20,000 for any given event or related series of events at any one plant, in a commercial escrow account pending resolution of the matter and by invoking the Dispute Resolution provisions of Part X within the time provided in Paragraph 31 for payment of stipulated penalties. If the dispute is thereafter resolved in Defendant's favor, the escrowed amount plus accrued interest shall be returned to the Defendant. Otherwise the Plaintiffs shall be entitled to the escrowed amount that was determined to be due by the Court plus the interest that has accrued on such amount, with the balance, if any, returned to the Defendant.

33. The Plaintiffs reserve the right to pursue any other remedies for violations of this Consent Decree to which they are entitled. The Plaintiffs will not seek stipulated penalties and civil or administrative penalties for the same violation of the Consent Decree.

VIII. RIGHT OF ENTRY

34. Any authorized representative of the EPA or WDNR, or an appropriate federal or state agency, including independent contractors, upon presentation of proper credentials and in compliance with the facility's safety requirements, shall have a right of entry upon the premises of Ace's plant identified herein at Paragraph 3(b) at any reasonable time for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment, and inspecting and copying all records maintained by Defendant required by this Consent Decree. Nothing in this Consent Decree shall limit the authority of EPA and WDNR to conduct tests and inspections under Section 114 of the Act, 42 U.S.C. § 7414 or any other applicable law.

IX. FORCE MAJEURE

35. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree, Defendant shall notify the Plaintiffs in writing as soon as practicable, but in any event within twenty (20) business days of when Defendant first knew of the event or should have known of the event by the exercise of due diligence. In this notice Defendant shall specifically reference this Paragraph of this Consent Decree and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by Defendant to prevent or minimize the delay

and the schedule by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize such delays.

36. Failure by Defendant to provide notice to Plaintiffs of an event which causes or may cause a delay or impediment to performance shall render this Part IX voidable by the Plaintiffs as to the specific event for which the Defendant has failed to comply with such notice requirement, and, if voided, is of no effect as to the particular event involved.

37. The United States or WDNR shall notify the Defendant in writing regarding the Defendant's claim of a delay or impediment to performance as soon as practicable, but in any event within thirty (30) days of receipt of the Force Majeure notice provided under Paragraph 35. If the Plaintiffs agree that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances. The Defendant shall not be liable for stipulated penalties for the period of any such delay.

38. If the Plaintiffs do not accept the Defendant's claim that a delay or impediment to performance is caused by a force majeure event, to avoid payment of stipulated penalties, the Defendant must submit the matter to this Court for resolution within twenty (20) business days after receiving notice of the Plaintiffs' position, by filing a petition for determination with this Court. Once the Defendant has submitted this matter to this Court, the Plaintiffs shall have twenty (20) business days to file a response to said petition. If the Defendant submits the matter

to this Court for resolution and the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances.

39. The Defendant shall bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond its control, including any entity controlled by it, and that the Defendant could not have prevented the delay by the exercise of due diligence. The Defendant shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

40. Unanticipated or increased costs or expenses associated with the performance of the Defendant's obligations under this Consent Decree shall not constitute circumstances beyond the control of the Defendant, or serve as a basis for an extension of time under this Part. However, failure of a permitting authority to issue a necessary permit in a timely fashion is an event of Force Majeure where the Defendant has taken all steps available to it to obtain the necessary permit including but not limited to:

- (a). submitting a timely and complete permit application;
- (b). responding to requests for additional information by the permitting authority in a timely fashion; and

(c). prosecuting appeals of any disputed terms and conditions imposed by the permitting authority in an expeditious fashion.

41. Notwithstanding any other provision of this Consent Decree, this Court shall not draw any inferences nor establish any presumptions adverse to either party as a result of Defendant delivering a notice of Force Majeure or the parties' inability to reach agreement.

42. As part of the resolution of any matter submitted to this Court under this Part IX, the parties by agreement, or this Court, by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay or impediment to performance agreed to by the Plaintiffs or approved by this Court. Defendant shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

X. DISPUTE RESOLUTION

43. The dispute resolution procedure provided by this Part X shall be available to resolve all disputes arising under this Consent Decree, excluding emission limits or other permit terms or conditions established by the WDNR, except as otherwise provided in Part IX regarding Force Majeure.

44. The dispute resolution procedure required herein shall be invoked upon the giving of written notice by one of the parties to this Consent Decree to another advising of a dispute pursuant to this Part X. The notice shall describe the nature of the dispute, and shall state the noticing party's position with regard to such dispute. The party receiving such a notice shall acknowledge receipt of the notice and the parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days from the receipt of such notice.

45. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting between representatives of the Plaintiffs and the Defendant, unless the parties' representatives agree to shorten or extend this period.

46. In the event that the parties are unable to reach agreement during such informal negotiation period, the Plaintiffs shall provide the Defendant with a written summary of their position regarding the dispute. The position advanced by the Plaintiffs shall be considered binding unless, within forty-five (45) calendar days of the Defendant's receipt of the written summary of the Plaintiffs position, the Defendant files with this Court a petition which describes the nature of the dispute, and includes a statement of the Defendant's position and any supporting data, analysis, and/or documentation relied on by the Defendant. The Plaintiffs shall respond to the petition within forty-five (45) calendar days of filing.

47. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Part X may be shortened upon motion of one of the parties to the dispute.

48. Notwithstanding any other provision of this Consent Decree, in dispute resolution, this Court shall not draw any inferences nor establish any presumptions adverse to either party as a result of invocation of this Part X or the parties' inability to reach agreement. The final position of the Plaintiffs shall be upheld by the Court if supported by substantial evidence in the record as identified and agreed to by all the Parties.

49. As part of the resolution of any dispute submitted to dispute resolution, the parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of dispute resolution. Defendant shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

XI. GENERAL PROVISIONS

50. Effect of Settlement. This Consent Decree is not a permit; compliance with its terms does not guarantee compliance with any applicable federal, state or local laws or regulations. Except as provided in Paragraph 16, to the extent that the terms of this Consent Decree conflict with the terms of any air quality permit, the terms of this Consent Decree shall control during the effective period of the Consent Decree.

51. Resolution of Claims. Satisfaction of all of the requirements of this Consent Decree constitutes full settlement of and shall resolve all past civil and administrative liability of the Defendant to the Plaintiffs for the violations alleged in the United States' and Plaintiff-Intervenor's Complaints and occurring through the lodging of this Consent Decree.

52. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Defendant of its obligation to comply with all applicable federal, state and local laws and regulations. Subject to Paragraphs 33 and 51, nothing contained in this Consent Decree shall be construed to prevent or limit the United States' or WDNR's rights to obtain penalties or injunctive relief under the Act or other federal, state or local statutes or regulations, including but not limited to, Section 303 of the Act, 42 U.S.C. § 7603.

53. Third Parties. Except as otherwise provided by law, this Consent Decree does not limit, enlarge or affect the rights of any party to this Consent Decree as against any third parties. Nothing in this Consent Decree should be construed to create any rights, or grant any cause of action, to any person not a party to this Consent Decree.

54. Costs. Each party to this Consent Decree shall bear its own costs and attorneys' fees through the date of entry of this Consent Decree.

55. Public Documents. All information and documents submitted by the Defendant to the Plaintiffs pursuant to this Consent Decree shall be subject to public inspection, unless subject to legal privileges or protection or identified and supported as business confidential by the Defendant in accordance with 40 C.F.R. Part 2.

56. Public Comments - Federal Approval. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The Plaintiffs reserve the right to withdraw or withhold consent if the comments regarding this Consent Decree discloses facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. The Defendant consents to the entry of this Consent Decree without further notice.

57. Notice. Unless otherwise provided herein, notifications to or communications with the United States, EPA, WDNR or the Defendant shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested. Except as otherwise provided herein, when written notification to

or communication with the United States, EPA, WDNR or the Defendant is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
DOJ Case NO: 90-5-2-1-07784

As to the U.S. EPA:

Bruce Buckheit
Director, Air Enforcement Division
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 2242-A
Washington, DC 20004

and the EPA Regional office for the region in which the facility is located:

Region 5:

Cynthia A. King
U.S. EPA, Region 5
C-14J
77 W. Jackson Blvd.
Chicago, IL 60604

Compliance Tracker
Air Enforcement Branch, AE-17J
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

As to Ace Ethanol L.L.C.:

General Manager
815 W. Maple Street
Stanley, WI 54768

As to Plaintiff-Intervenor the State of Wisconsin:

Assistant Attorney General Shari Eggleson
Wisconsin Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707

Tom Ponty
Wisconsin Department of Natural Resources
1300 W. Clairemont Ave.
Eau Claire, WI 54701

58. Change of Notice Recipient. Any party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address.

59. Modification. There shall be no modification of this Consent Decree without written agreement of all the parties. There shall be no material modification of this Consent Decree without the written agreement of the parties and by Order of the Court. Prior to complete termination of the requirements of this Consent Decree pursuant to Paragraph 61, the parties may, upon motion to the Court, seek to terminate provisions of this Consent Decree.

60. Continuing Jurisdiction. The Court retains jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or modification. During the term of this Consent Decree, any party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XII. TERMINATION

61. This Consent Decree shall be subject to termination upon motion by any party after the Defendant satisfies all requirements of this Consent Decree and has operated the control technologies identified in the approved Control Technology Plan in compliance with the emission limits established under this Consent Decree for 12 months. At such time, if the Defendant believes that it is in compliance with the requirements of this Consent Decree, and has paid the civil penalty and any stipulated penalties required by this Consent Decree, then the Defendant shall so certify to the Plaintiffs, and unless the Plaintiffs object in writing with specific reasons within forty-five (45) days of receipt of the certification, the Court shall order that this Consent Decree be terminated on Defendant's motion. If the United States or WDNR objects to the Defendant's certification, then the matter shall be submitted to the Court for resolution under Part X ("Dispute Resolution") of this Consent Decree. In such case, the Defendant shall bear the burden of proving that this Consent Decree should be terminated.

So entered in accordance with the foregoing this _____ day of _____, 2004.

United States District Court Judge
Western District of Wisconsin

U.S. and the State of Wisconsin v. Ace Ethanol, L.L.C.
FOR PLAINTIFF, UNITED STATES OF AMERICA:

W. Benjamin Fisherow
Deputy Chief
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, DC 20005

Date _____

Dianne M. Shawley
Senior Counsel
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, DC 20005

Date _____

Cynthia A. King
Special Trial Attorney
US EPA Region 5
77 W. Jackson Street
Chicago, IL 60604

Date 12/4/03

U.S. and the State of Wisconsin v. Ace Ethanol, L.L.C.
FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date 12/21/03

Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Street
Chicago, IL 60604

U.S. and the State of Wisconsin v. Ace Ethanol, L.L.C.
FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date 11/5/04

J.P. Suarez
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

U.S. and the State of Wisconsin v. Ace Ethanol, L.L.C.

United States Attorney
District of Wisconsin

Date _____

J.B. VAN HOLLEN
United States Attorney

LESLIE K. HERJE
Assistant United States Attorney
Chief, Civil Division
P.O. Box 1585
Madison, Wisconsin 53701-1585
(608) 264-5158
TTY (608) 264-5006
United States Attorney

U.S. and the State of Wisconsin v. Ace Ethanol, L.L.C.

FOR THE PLAINTIFF-INTERVENOR, THE STATE OF WISCONSIN:

PEGGY A. LAUTENSCHLAGER
Attorney General

Date November 28, 2003


SHARI EGGLESON
Assistant Attorney General

U.S. and the State of Wisconsin v. Ace Ethanol, L.L.C.
FOR DEFENDANT, ACE ETHANOL, L.L.C.:

Alexander Samardzich, President
Ace Ethanol, L.L.C.

Date

11/25/13

Norman Spooner, Vice-President
Ace Ethanol, L.L.C.

Date

11-25/03